

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.5318 of 2016 (O&M)

Date of Decision: September 08, 2016

Rakesh Tandon and others

---Petitioners

Versus

The Vice Chancellor, Chaudhary Charan Singh
Haryana Agricultural University, Hisar and another

---Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Chander Shekhar, Advocate
for the petitioners.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for quashing proviso (a) and (c) of Sub Clause (3) of Section 6 of Chapter VIII of the 'Classification and the Manner of Appointment of Employees of the University Other Than Officers and Teachers as framed by the Board of the respondent-University on 28.10.1999 to the extent it lays down the condition of qualifying a competitive test for promotion to the post of Junior Scale Stenographer and Senior Scale Stenographer. Further prayer is for quashing the order dated 12.12.2011 (Annexure P-2) whereby condition in Rule 8 of the Haryana Civil Services (Assured Career Progression) Rules, 2008, which requires passing of any departmental test or other test for availing the benefit of ACP had been directed to be adhered to in case of Group-'C', 'B' and 'A' employees but has been relaxed in case of Group-D employees.

2 The petitioners were appointed as Steno Typist in the scale of

1984 to 1986 after qualifying the shorthand test @ 80 words per minute. At the time of their appointments, the promotion schedule of Stenographic cadre was as under:

- “a) Steno-typist*
- b) Stenographer*
- c) Personal Assistant*
- d) Private Secretary*
- e) S.P.S.”*

The respondent-University adopted Cadre Management in the University and new schedule of promotion came into force on 13.06.2006, which is as under:

- “a) Steno-typist*
- b) Junior Scale Stenographer*
- c) Senior Scale Stenographer*
- d) Personal Assistant*
- e) Private Secretary*
- f) S.P.S.”*

3. As per this new career management, a new post of Junior Scale Stenographer came into existence between that of Steno-typist and Stenographer.

4. It is the case of the petitioners that prior to the adoption of new Cadre Management, there was a provision to conduct a shorthand test after every six months for promotion to the post of Stenographer. However, the respondents did not conduct the said shorthand test for about 12 years from 1996 to March 2008. Resultantly, the petitioners did not get an opportunity to qualify the test and avail of consequent promotion. It was only in the year 2008 after adoption of new Cadre Management that the shorthand test was conducted in 2008 for promotion to the post of Junior

Scale Stenographer. The petitioners qualified therein and were promoted to the post of Junior Scale Stenographer. Thereafter, the petitioners qualified the test for promotion to the post of Senior Scale Stenographer. By then, they had reached the age of 50/55 years. However, they could not be promoted as there were no vacant post of Senior Scale Stenographer.

5. Learned counsel for the petitioners has argued that the condition of qualifying the competitive test is wrong and unjustified for the reason that the respondents themselves did not conduct competitive test for almost 12 years thereby depriving the petitioners of the chance to compete and the consequent promotion. It is further argued that the nature of duties of stenographic cadre remains the same upto the level of P.A. and P.S., hence the compulsion of qualifying the shorthand test time and again for a person who qualified the same initially at the time of his/her appointment is not at all justified. It is also argued that in the promotion schedule of clerical cadre, seniority-cum-merit played an important role, whereas, there is no such rule in the stenographic cadre.

6. The condition in para 8 of the Haryana Civil Services (Assured Career Progression) Rules, 2008 of passing the departmental test for availing the benefit of ACP is questioned as being arbitrary and unreasonable for the same reason.

7. Heard learned counsel for the petitioners and perused the record.

8. Section 6 of Chapter VIII 'Classification and the Manner of Appointment of Employees of the University Other Than Officers and Teachers' in so far as relevant is as under:

“6. Manner of appointment to Class-III/Grade 'C' posts.

(1) The appointment upto Class-III/Grade 'C' posts, as specified in the Appendix -I 'A' shall be made by the respective Deans/Directors/Officers of the University, indicated. In case of other Class-III /grade 'C' posts, the Vice-Chancellor shall be the appointing authority.

(2) The lowest posts in Class-III/Grade 'C' ministerial shall be filled by direct recruitment in the manner prescribed for Class-II/Grade 'B' posts. Lowest posts in Grade 'C'/Class-III non ministerial cadres shall also be filled by direct recruitment if there is no line of promotion determined from Class-IV/Grade 'D' for promotion to Class-III/Grade 'C'. Other posts in the ministerial and non-ministerial cadres shall be filled by promotion on the basis of seniority-cum-merit from the same line subject to the condition that posts in non-ministerial cadre shall be filled by promotion provided the departmental candidates fulfil the qualifications and experience prescribed for the post.

If suitable persons are not available for promotion, all categories of posts may be filled by direct recruitment.

(3) The provision in sub-para (2) of Clause 6 shall be subject to the following:

(a) Promotion to the posts of Junior Scale Stenographer and Senior Scale Stenographer shall be subject to qualify competitive test prescribed and fulfilment of conditions of experience (see Appendix-3). Completion of probationary period shall be pre-requisite.

(aa) 50% of the posts for promotion to the post of Deputy Superintendents shall be filled on the basis of seniority-cum-merit out of Assistants who have qualified the Higher Standard Examination or State SAS Examination in Accounts. Completion of probationary period shall be pre-requisite.

(b) 50% posts of Assistants shall be filled from amongst the clerks/typists etc. on seniority-cum-merit basis and 50% from amongst the clerks/typists etc. who have qualified the

Lower Standard Departmental Examination in Accounts on Seniority-cum-merit basis subject to fulfilment of qualifications and experience prescribed (see Appendix-3). Completion of probationary period shall be pre-requisite.

(c) For the posts of Clerks and equivalent posts in ministerial cadre and for Steno-typists competitive test with prescribed qualifying standard and in the manner laid down by the Vice Chancellor may be held and interview held for those who qualify. This procedure may also be adopted for such other posts as may be specified by the Vice - Chancellor from time to time.

xxx

xxx

xxx”

9. As per proviso (a) of Sub-Clause (3) of Section 6, promotion to the posts of Junior Scale Stenographer and Senior Scale Stenographer shall be subject to qualifying the competitive test prescribed and fulfilment of conditions of experience. As per proviso (c) of Sub-Clause (3) of Section 6 for the posts of Clerks and equivalent posts in ministerial cadre and for Steno-typists a competitive test with prescribed qualifying standard and in the manner laid down by the Vice Chancellor may be held and interview held for those who qualify. This procedure may also be adopted for such other posts as may be specified by the Vice- Chancellor from time to time.

10. It is well settled that all matters relating to the prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. Similarly, the steps that should be taken for improving efficiency of the administration is also the preserve of the employer. In **Union of India v. Pushpa Rani, (2008) 9 SCC 242** :

“29. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters

relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open to the court to make comparative evaluation of the merit of the candidates. The court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.”

11. If the Board has made qualifying a prescribed competitive test a condition for promotion to the post of Junior Scale Stenographer and Senior Scale Stenographer, that condition cannot be said to be ultra vires or arbitrary. Nor has the Ld. Counsel for the petitioner been able to demonstrate as to how it is ultra vires or arbitrary or unreasonable and thus liable to be quashed. The mere fact that no test as prescribed was held for over a decade, thereby denying the petitioners a chance to clear it and become eligible for promotion is not a ground to question the vires of the provision. If the petitioners were aggrieved of the non holding of the test and consequent denial of promotion to them, they could at the relevant time have sought departmental or legal redress. But it appears, they chose to

remain silent. Any way as per the petitioners own averment the test was held in 2008 and, thereafter, the petitioners have cleared the same and have been promoted as Junior Scale Stenographers and some as Senior Scale Stenographers as well. Hence, there is no merit in this claim of the petitioners.

12. The other limb of challenge in the petition is to order dated 12.12.2011 (Annexure P-2), whereby, it has been decided to adhere to Rule 8 of the ACP Rules which requires passing of the departmental test as a condition for availing the benefit of ACP. Rule 8 of the Haryana Civil Services (Assured Career Progression) Rules, 2008 is as under:

“8. Other general conditions of eligibilities of ACP pay structure:-

The following general conditions shall also be fulfilled by a Government servant for availing benefit of ACP:-

- (a) after completing the respective prescribed period for eligibility for the grant of ACP pay structure the Government servant should be fit to be promoted to the next higher post in the functional hierarchy in his cadre, but could not be functionally promoted due to lack of vacancy in the promotional post in the hierarchy to which he is eligible to be promoted;*
- (b) if such promotion involved passing of any departmental test or other test etc., such condition should also be fulfilled by such Government by such Government servant.”*

Rule 25 of the ACP Rules empowers the Government to relax the requirements of the rules on its being satisfied that the operation of all or any of the provisions of the Rules cause undue hardship in any particular case.

13. In exercise of that power the Government vide the impugned

notification (Annexure P-2) has decided that the provision of Rule 8 only to the extent of educational qualifications and departmental test, if any, be relaxed in case of Group 'D' employees as a token of incentive to the lower strata of employees as a welfare measure. But the provision of Rule 8 would need to adhered to in case of Group –'C', 'B' and 'A' employees in order to maintain the required level of efficiency.

14. Ld. Counsel for the petitioner has not been able to address any worthwhile argument against the aforesaid order stressing the necessity of adhering to Rule 8 to Group 'C', 'B' and 'A' employees while relaxing the same qua Group 'D' employees as a welfare measure and token of incentive.

15. We also find no infirmity either in Rule 8 or the order dated 12.12.2011 (Annexure P-2) which is well thought out and reasoned.

16. Accordingly, this writ petition is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

08.09.2016

Atul

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No